

## **Exhibit 4**

1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 Index No. 1:15-cv-04384 (KBF)

5 -----x

6 SMART INSURANCE COMPANY,  
7 Plaintiff,

8  
9 - against -

10 BENECARD SERVICES, INC.,  
11 Defendant.

12 -----x

July 15, 2016

13 10:02 a.m.

14  
15 Videotaped Deposition of FRANCOISE  
16 CULLEY-TROTMAN, taken by Plaintiff,  
17 pursuant to Notice, held at the offices of  
18 DLA Piper LLP, 1251 Avenue of the Americas,  
19 New York, New York, before Todd DeSimone, a  
20 Registered Professional Reporter and Notary  
21 Public of the State of New York.  
22  
23  
24  
25

<p style="text-align: right;">Page 14</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 A. Correct.</p> <p>3 Q. Have you been employed by a</p> <p>4 Part D plan before?</p> <p>5 A. Yes.</p> <p>6 Q. Which ones on your resume are</p> <p>7 Part D plans?</p> <p>8 A. All of those companies are what</p> <p>9 are called Medicare Advantage Part D plans.</p> <p>10 Some of them offer Medicare Advantage and</p> <p>11 Part D plans, some of them offer</p> <p>12 prescription drug program plans that only</p> <p>13 have a Part D benefit.</p> <p>14 So in all of those companies,</p> <p>15 I've worked for companies that offered a</p> <p>16 prescription drug plan.</p> <p>17 Q. Have you ever worked on behalf</p> <p>18 of a PBM before?</p> <p>19 A. I have not represented a PBM</p> <p>20 before.</p> <p>21 Q. Of the Part D plans that you've</p> <p>22 worked for before, how many of them have</p> <p>23 engaged a third party to act as a PBM while</p> <p>24 you were there?</p> <p>25 A. All of them.</p>	<p style="text-align: right;">Page 16</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 to be the services in the contract.</p> <p>3 Q. Fair enough.</p> <p>4 You do agree, however, that in</p> <p>5 the administration of its obligations under</p> <p>6 a contract, the PBM needs to cooperate in</p> <p>7 the carrying out of its obligations with</p> <p>8 the sponsor, correct?</p> <p>9 MR. BUNN: Objection to form.</p> <p>10 A. I think it's a basic</p> <p>11 expectation that if I contract with</p> <p>12 someone, that, you know, I have an</p> <p>13 expectation to get whatever is in the</p> <p>14 contract.</p> <p>15 Q. Well, this is more than just a</p> <p>16 basic contract expectation, isn't it,</p> <p>17 because it is a regulated entity with CMS</p> <p>18 oversight, correct?</p> <p>19 MR. BUNN: Objection to form.</p> <p>20 A. I believe a contract is a</p> <p>21 contract, and it doesn't matter whom the</p> <p>22 two parties are.</p> <p>23 There are certain expectations</p> <p>24 that are set out for both parties, and</p> <p>25 specifically in the PBM contracts there is</p>
<p style="text-align: right;">Page 15</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Q. Can you tell me who the PBMs</p> <p>3 were?</p> <p>4 A. Express Scripts, OptumRx</p> <p>5 offered by United Health Plans, Envision</p> <p>6 PBM, CVS Caremark. Those are the ones that</p> <p>7 I recall that come to mind.</p> <p>8 Q. Do you agree that when you have</p> <p>9 worked at a Part D plan which has employed</p> <p>10 a PBM, an outside company as a PBM, that</p> <p>11 the sponsor expects the PBM to cooperate in</p> <p>12 the administration of the plan?</p> <p>13 MR. BUNN: Objection to form.</p> <p>14 A. Can you please repeat that? It</p> <p>15 is a longer question.</p> <p>16 Q. It is a long question. I</p> <p>17 apologize.</p> <p>18 When you have worked on behalf</p> <p>19 of a Part D plan, do you agree that the</p> <p>20 plan has expected the sponsor -- I'm sorry,</p> <p>21 the PBM to cooperate in the administration</p> <p>22 of the plan?</p> <p>23 A. I believe that both parties are</p> <p>24 expected to cooperate to accomplish what</p> <p>25 they contracted, you know, what they agreed</p>	<p style="text-align: right;">Page 17</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 a reason that it is set out that way,</p> <p>3 because one cannot perform without the</p> <p>4 other, you know, sort of delivering or</p> <p>5 cooperating and providing whatever</p> <p>6 information, data sets, that they are</p> <p>7 supposed to.</p> <p>8 So I don't see that as a</p> <p>9 one-sided relationship.</p> <p>10 Q. I didn't -- go ahead, I'm</p> <p>11 sorry.</p> <p>12 A. So I think my statement stands</p> <p>13 that it has to be both parties have</p> <p>14 expectations and the one is not able to</p> <p>15 deliver without the other.</p> <p>16 Q. I understand. I'm not asking</p> <p>17 you about what the sponsor's obligations</p> <p>18 are.</p> <p>19 I'm asking you, just simply in</p> <p>20 the carrying out of its duties, you do</p> <p>21 agree that a PBM must cooperate with the</p> <p>22 sponsor in the administration of the plan?</p> <p>23 A. Yes.</p> <p>24 Q. And there is an expectation</p> <p>25 both from the sponsor and from CMS that the</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 34</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 MR. BUNN: Do you understand</p> <p>3 that?</p> <p>4 THE WITNESS: I do.</p> <p>5 Q. Can you answer it?</p> <p>6 A. It was regarding the case.</p> <p>7 Q. When did you start working on</p> <p>8 your expert report in the case?</p> <p>9 A. I would say probably February</p> <p>10 of 2016, requesting documents.</p> <p>11 MR. BUNN: Excuse me, he didn't</p> <p>12 ask you what the work was. He asked you</p> <p>13 for a date.</p> <p>14 THE WITNESS: Okay. I'll try</p> <p>15 to be more careful.</p> <p>16 Q. When you started working on --</p> <p>17 strike that.</p> <p>18 Your expert report at least</p> <p>19 states that it is rebutting the expert</p> <p>20 report of Ms. Costell; is that your</p> <p>21 understanding of what you've written?</p> <p>22 A. Yes.</p> <p>23 Q. Did you start working on your</p> <p>24 expert report in the case after Ms. Costell</p> <p>25 submitted her expert report in the case?</p>	<p style="text-align: right;">Page 36</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 A. I'm trying to remember the</p> <p>3 exact date. I don't.</p> <p>4 Q. Roughly April?</p> <p>5 A. Yeah.</p> <p>6 Q. Were there any other meetings</p> <p>7 you've had with people at Benecard?</p> <p>8 Strike that. Let me ask that</p> <p>9 clearer.</p> <p>10 Were there any other meetings</p> <p>11 you've had with employees or former</p> <p>12 employees of Benecard?</p> <p>13 A. Yes.</p> <p>14 Q. When?</p> <p>15 A. I really do not recall.</p> <p>16 Q. Was it after the April meeting?</p> <p>17 A. Probably prior to the April</p> <p>18 meeting.</p> <p>19 Q. Was it in 2016?</p> <p>20 A. Yes.</p> <p>21 Q. How many?</p> <p>22 A. No, I'm sorry.</p> <p>23 Q. That's okay.</p> <p>24 A. It may have been 2016, but at</p> <p>25 this point I honestly do not recall the</p>
<p style="text-align: right;">Page 35</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 A. My focused arguments --</p> <p>3 MR. BUNN: Excuse me, that is a</p> <p>4 yes or no question.</p> <p>5 A. Yes.</p> <p>6 Q. Did you do any other work that</p> <p>7 you considered or relied upon in writing</p> <p>8 your expert report before you started</p> <p>9 writing the report?</p> <p>10 A. No.</p> <p>11 MR. BUNN: These are yes or no</p> <p>12 questions.</p> <p>13 THE WITNESS: Got it.</p> <p>14 Q. Have you had any meetings with</p> <p>15 anyone at Benecard?</p> <p>16 A. Yes.</p> <p>17 Q. Tell me who. You know what,</p> <p>18 strike that. Tell me when.</p> <p>19 A. Sometime in April are the ones</p> <p>20 that I actually do remember, and it was --</p> <p>21 MR. BUNN: His question is</p> <p>22 when.</p> <p>23 THE WITNESS: Okay.</p> <p>24 Q. Where was that meeting? Strike</p> <p>25 that.</p>	<p style="text-align: right;">Page 37</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 actual dates of those meetings.</p> <p>3 Q. How many meetings have you had</p> <p>4 with employees or former employees of</p> <p>5 Benecard?</p> <p>6 A. Two or three.</p> <p>7 Can I ask a question? By</p> <p>8 meetings, these are teleconferences. I</p> <p>9 just want to be clear.</p> <p>10 Q. I appreciate that</p> <p>11 clarification. I would consider those</p> <p>12 meetings. But that's a helpful</p> <p>13 clarification.</p> <p>14 So you had phone calls with</p> <p>15 them?</p> <p>16 A. Yeah.</p> <p>17 Q. Who was on those phone calls?</p> <p>18 A. I think Jennifer Fuhrmann, Dave</p> <p>19 Slonac. Those are at least two of the</p> <p>20 people that I remember. And, again, I</p> <p>21 don't remember the entire list.</p> <p>22 Q. Was Michael Perry on any of</p> <p>23 those calls?</p> <p>24 A. No.</p> <p>25 Q. Were the lawyers on any of</p>

<p style="text-align: right;">Page 106</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Q. And technically, each time it's</p> <p>3 denied, if that denial is improper, each</p> <p>4 one is improper; you agree with that?</p> <p>5 A. Yes, technically, yes.</p> <p>6 Q. And when I talk about 50,000</p> <p>7 claims, I'm not including those kind of</p> <p>8 denials. If a claim was denied once, I'm</p> <p>9 not talking about attempts to put it back</p> <p>10 through. Do you understand that?</p> <p>11 A. I understand your explanation.</p> <p>12 Q. So my question is, with that</p> <p>13 definition of what an improper denial is,</p> <p>14 not counting repeated denials of the same</p> <p>15 claim being put through, have you worked</p> <p>16 with plans that have suffered in a</p> <p>17 six-month or less period more than 50,000</p> <p>18 improper claim denials at the point of</p> <p>19 sale?</p> <p>20 A. Yes.</p> <p>21 MR. BUNN: Objection to form.</p> <p>22 Q. And would that be true of both</p> <p>23 WellCare and Universal?</p> <p>24 A. WellCare.</p> <p>25 Q. And WellCare had well more than</p>	<p style="text-align: right;">Page 108</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 a bunch of documents after a paragraph that</p> <p>3 had a bunch of sentences, that the</p> <p>4 different documents supported different</p> <p>5 propositions in the paragraph.</p> <p>6 Is that an incorrect</p> <p>7 assumption?</p> <p>8 A. All of the documents together,</p> <p>9 yes, supported the paragraph on a whole.</p> <p>10 Q. Do you know which document in</p> <p>11 this footnote supports --</p> <p>12 A. No.</p> <p>13 MR. BUNN: Wait.</p> <p>14 A. Sorry.</p> <p>15 Q. That's okay. Let me start</p> <p>16 over. Strike that.</p> <p>17 Do you know which document in</p> <p>18 this footnote supports your assertion that</p> <p>19 CMS didn't feel like Smart understood how</p> <p>20 rigorous PBM oversight has to be and is not</p> <p>21 fully staffed for it?</p> <p>22 A. It is an e-mail communication</p> <p>23 between Babette Edgar, who was relaying</p> <p>24 this information to SmartD plan.</p> <p>25 I obviously did not commit</p>
<p style="text-align: right;">Page 107</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 100,000 members?</p> <p>3 A. Yes, and well more than 50,000</p> <p>4 inappropriate rejections.</p> <p>5 Q. Turn to page 7 of your report.</p> <p>6 This is where your opinions</p> <p>7 start, correct?</p> <p>8 A. Correct.</p> <p>9 Q. You say, at the end of</p> <p>10 paragraph 4(a), which is the first</p> <p>11 paragraph of your opinions, that "CMS</p> <p>12 didn't feel like Smart understood how</p> <p>13 rigorous PBM oversight has to be and is not</p> <p>14 fully staffed for it."</p> <p>15 Then you cite SMT 174579 for</p> <p>16 that proposition, correct?</p> <p>17 MR. BUNN: Objection to form.</p> <p>18 A. Yes, I cite four documents to</p> <p>19 support that proposition.</p> <p>20 Q. Well, let me ask you, I had a</p> <p>21 hard time following what you were trying to</p> <p>22 do in your citations. It's not a</p> <p>23 criticism. I'm just being honest, I didn't</p> <p>24 understand.</p> <p>25 I assumed that when you listed</p>	<p style="text-align: right;">Page 109</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Bates number documents to memory. But I</p> <p>3 will be happy to take a look at it.</p> <p>4 (FCT Exhibit 3 marked for</p> <p>5 identification.)</p> <p>6 Q. I'm handing you what I have</p> <p>7 marked as FCT Exhibit 3, which is SMT</p> <p>8 174576 to 79, which is the first document</p> <p>9 cited in that footnote.</p> <p>10 I believe that is the document</p> <p>11 you are referring to, but you tell me if my</p> <p>12 assumption is correct.</p> <p>13 (Witness perusing document.)</p> <p>14 A. It is correct.</p> <p>15 Q. And just to be clear, this</p> <p>16 document is Steph Bayer reporting what</p> <p>17 Babette Edgar said to Ms. Bayer about what</p> <p>18 CMS said to her, correct?</p> <p>19 A. Correct.</p> <p>20 Q. You and I don't know what CMS</p> <p>21 really said, do we?</p> <p>22 A. I think it is very reasonable</p> <p>23 that this was being reported almost</p> <p>24 verbatim.</p> <p>25 Q. Let me ask you my question</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 118</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Q. No, that's not what I asked.</p> <p>3 I asked, can you and I agree</p> <p>4 that it makes it harder for a plan sponsor</p> <p>5 to oversee the administration of its plan</p> <p>6 if the party to whom it has delegated</p> <p>7 responsibility for carrying out the day to</p> <p>8 day activities isn't cooperating?</p> <p>9 A. I think it would be a</p> <p>10 challenge, but it doesn't relieve the plan</p> <p>11 sponsor of its obligation.</p> <p>12 Q. I understand. But it makes it</p> <p>13 harder, doesn't it?</p> <p>14 A. Yes.</p> <p>15 Q. Do you think it makes sense for</p> <p>16 a PBM to refuse to cooperate in the</p> <p>17 administration of a plan, but then turn</p> <p>18 around and complain that the sponsor didn't</p> <p>19 oversee it enough?</p> <p>20 MR. BUNN: Objection to form.</p> <p>21 A. Do I think it makes sense if a</p> <p>22 PBM does what?</p> <p>23 Q. Do you think it makes sense for</p> <p>24 a PBM to refuse to cooperate in the day to</p> <p>25 day administration of a plan, but then turn</p>	<p style="text-align: right;">Page 120</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 and Benecard required Benecard to comply</p> <p>3 with CMS rules and guidelines and</p> <p>4 regulations, correct?</p> <p>5 MR. BUNN: Objection to form.</p> <p>6 Q. Do you recall that?</p> <p>7 A. Correct.</p> <p>8 Q. CMS actually forces sponsors to</p> <p>9 include a provision like that in all</p> <p>10 contracts with FDRs, doesn't it?</p> <p>11 A. Correct.</p> <p>12 Q. By law?</p> <p>13 MR. BUNN: Objection to form.</p> <p>14 A. It's a CMS requirement that</p> <p>15 that clause be included in the contract.</p> <p>16 Q. Does the contract also include</p> <p>17 a provision that requires -- and when I say</p> <p>18 the contract, I mean the PBMA -- does it</p> <p>19 include a provision that requires Smart to</p> <p>20 comply with CMS rules and regulations in</p> <p>21 its relationship with Benecard?</p> <p>22 MR. BUNN: Objection to form.</p> <p>23 A. Can you repeat the question,</p> <p>24 please?</p> <p>25 Q. Sure.</p>
<p style="text-align: right;">Page 119</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 around and complain that the sponsor didn't</p> <p>3 oversee it enough?</p> <p>4 MR. BUNN: Objection to form.</p> <p>5 THE WITNESS: Am I answering</p> <p>6 this question?</p> <p>7 MR. BUNN: Yes, you answer any</p> <p>8 question unless I instruct you not to. But</p> <p>9 you give me enough time to give an</p> <p>10 objection, and if an instruction is</p> <p>11 warranted, give me enough time to give you</p> <p>12 that, too, which you are not doing.</p> <p>13 THE WITNESS: Okay.</p> <p>14 Q. You can answer.</p> <p>15 A. I can't opine on that.</p> <p>16 Q. You say in paragraph 4(a) of</p> <p>17 your report that "Smart did not provide</p> <p>18 effective oversight of Benecard consistent</p> <p>19 with CMS guidelines," correct?</p> <p>20 A. Yes, it's stated.</p> <p>21 Q. And that's your interpretation</p> <p>22 of CMS guidelines, not the contract between</p> <p>23 Smart and Benecard, correct?</p> <p>24 A. Correct.</p> <p>25 Q. Now, the contract between Smart</p>	<p style="text-align: right;">Page 121</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Does the PBMA include a</p> <p>3 provision that also requires Smart to</p> <p>4 comply with CMS rules and regulations in</p> <p>5 its relationship with Benecard?</p> <p>6 MR. BUNN: Same objection.</p> <p>7 Q. If you know.</p> <p>8 A. I don't recall.</p> <p>9 Q. And then you state in your</p> <p>10 report, this opinion that we've just been</p> <p>11 talking about "is based on extensive</p> <p>12 evidence from SmartD employee depositions,</p> <p>13 associated documents, and CMS's assessment</p> <p>14 of SmartD's actions," correct?</p> <p>15 A. Correct.</p> <p>16 Q. I want to break that down.</p> <p>17 With respect to the SmartD</p> <p>18 employee depositions, you read three,</p> <p>19 right?</p> <p>20 A. Correct.</p> <p>21 Q. Bayer, Cappadonna and Kang?</p> <p>22 A. Correct.</p> <p>23 Q. You haven't read the deposition</p> <p>24 of Danielle Panich?</p> <p>25 A. I cited the depositions that</p>

<p style="text-align: right;">Page 130</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 but -- I know they are Smart employees.</p> <p>3 Q. And with respect to the</p> <p>4 associated documents you read, is that a</p> <p>5 reference to what's listed in your report?</p> <p>6 A. Yes, they are the e-mails</p> <p>7 cited, the e-mail.</p> <p>8 Q. So 30 documents?</p> <p>9 A. Yeah.</p> <p>10 Q. And with respect to the CMS</p> <p>11 assessment of SmartD's actions, that's a</p> <p>12 reference to the sanctions letter?</p> <p>13 A. I'm referring to CMS's comments</p> <p>14 in letters or e-mails that I saw.</p> <p>15 Q. The ones listed in your report?</p> <p>16 A. Yes.</p> <p>17 Q. So documents within the 30</p> <p>18 documents we just talked about?</p> <p>19 A. Yes.</p> <p>20 Q. Look at paragraph 4(b) of your</p> <p>21 report now.</p> <p>22 You say there that "Per CMS and</p> <p>23 industry guidelines, SmartD is allowed to</p> <p>24 choose its own methods of monitoring the</p> <p>25 FDR."</p>	<p style="text-align: right;">Page 132</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 to CMS if something goes wrong with the</p> <p>3 plan even if what went wrong involved an</p> <p>4 area that had been delegated to an FDR,</p> <p>5 correct?</p> <p>6 A. Yes, the plan sponsor has</p> <p>7 ultimate responsibility.</p> <p>8 Q. And because it's on the hook</p> <p>9 and because the plan is its plan, Smart has</p> <p>10 the right to decide, in your words, its own</p> <p>11 methods of monitoring the FDR, correct?</p> <p>12 A. Yes, as long as they are</p> <p>13 effective, yes, it can determine that.</p> <p>14 Q. And per CMS and industry</p> <p>15 guidelines, the FDR is supposed to</p> <p>16 cooperate in that effort, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Now, in that same paragraph you</p> <p>19 say that "CMS did not stipulate that SmartD</p> <p>20 needed greater access to Benecard's</p> <p>21 production systems to accomplish effective</p> <p>22 oversight."</p> <p>23 Do you see that?</p> <p>24 A. I see that.</p> <p>25 Q. What does that mean, "did not</p>
<p style="text-align: right;">Page 131</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Do you see that?</p> <p>3 A. Correct.</p> <p>4 Q. What do you mean by that?</p> <p>5 A. CMS does not specify in the</p> <p>6 guidelines a standard operating procedure,</p> <p>7 if you will, for SmartD's oversight of its</p> <p>8 PBM. Instead, it publishes general</p> <p>9 guidelines for requirements like routine</p> <p>10 auditing and monitoring and so on, and</p> <p>11 allows the health plan to come up with a</p> <p>12 specific operating procedure as to how it's</p> <p>13 going to oversee the PBM.</p> <p>14 Q. And Smart is the plan sponsor,</p> <p>15 it owes responsibilities to CMS for the</p> <p>16 operation of its plans, right?</p> <p>17 A. Correct.</p> <p>18 Q. And as we talked about earlier,</p> <p>19 it is responsible to CMS if something goes</p> <p>20 wrong with the administration of the plans</p> <p>21 even if the issue has been delegated or the</p> <p>22 responsibility has been delegated to</p> <p>23 someone else, right?</p> <p>24 A. Can you repeat that?</p> <p>25 Q. It is responsible, the sponsor,</p>	<p style="text-align: right;">Page 133</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 stipulate"? What did you mean by that?</p> <p>3 A. So in the written CMS</p> <p>4 guidelines in the chapter, there is not a</p> <p>5 specific rule that states that -- that</p> <p>6 specifies what level of system access is</p> <p>7 required for SmartD to perform effective</p> <p>8 oversight.</p> <p>9 Q. Well, this statement, though,</p> <p>10 is a little bit more specific. You say</p> <p>11 that "CMS did not stipulate that SmartD</p> <p>12 needed greater access to Benecard's</p> <p>13 production systems to accomplish effective</p> <p>14 oversight."</p> <p>15 You are talking specifically</p> <p>16 about what CMS said about Smart and</p> <p>17 Benecard, right?</p> <p>18 A. I'm speaking specifically about</p> <p>19 what CMS outlines in the guidelines as a</p> <p>20 continuation of the paragraph, as what is</p> <p>21 appropriate or effective oversight.</p> <p>22 Q. Why is it important to you that</p> <p>23 CMS did not stipulate that SmartD needed</p> <p>24 greater access to Benecard's production</p> <p>25 systems --</p>



<p style="text-align: right;">Page 142</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 MR. BUNN: Wait until he</p> <p>3 finishes his question.</p> <p>4 Q. You are adding the phrase</p> <p>5 "supported my testimony."</p> <p>6 A. Yes.</p> <p>7 Q. But I'm not including that</p> <p>8 phrase. I'm asking you point blank, yes or</p> <p>9 no, if you reviewed a document that relates</p> <p>10 to the subject matter of your testimony,</p> <p>11 did you include it in your list of reviewed</p> <p>12 documents --</p> <p>13 MR. BUNN: Objection to form.</p> <p>14 Q. -- even if it didn't support</p> <p>15 what you wrote here?</p> <p>16 A. You are asking if I reviewed a</p> <p>17 document, period, but it has, in my view,</p> <p>18 nothing to do with any of the points listed</p> <p>19 in my report, is it listed in the list of</p> <p>20 reviewed documents?</p> <p>21 Q. No, I'm not asking you that at</p> <p>22 all. I don't think my question is</p> <p>23 complicated. Maybe it is. Let me break it</p> <p>24 down.</p> <p>25 If you reviewed a document that</p>	<p style="text-align: right;">Page 144</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 report, I listed it.</p> <p>3 Q. No, I'm not asking you that.</p> <p>4 I'm not asking you that. And I think my</p> <p>5 question is clear, and I don't understand</p> <p>6 why I cannot get an answer.</p> <p>7 I'm asking you point blank, if</p> <p>8 you reviewed a document related to this</p> <p>9 subject matter, did you list it as a</p> <p>10 document you reviewed? Yes or no.</p> <p>11 MR. BUNN: Objection to form.</p> <p>12 Q. There is a question pending.</p> <p>13 A. I know. And, again, my answer</p> <p>14 is all of the documents that I reviewed to</p> <p>15 support my report is listed here.</p> <p>16 Q. What if they didn't support</p> <p>17 your report?</p> <p>18 A. If they had no bearing or I</p> <p>19 wasn't addressing those subjects, then it's</p> <p>20 not in there.</p> <p>21 There are documents that I saw</p> <p>22 in passing -- when I list documents I</p> <p>23 reviewed, I actually went through the</p> <p>24 document, read every page, reviewed it in</p> <p>25 its entirety, and I don't believe I can say</p>
<p style="text-align: right;">Page 143</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 relates to the subject of your report, the</p> <p>3 Smart/Benecard relationship, the CMS audit</p> <p>4 of Smart, the topics that are covered in</p> <p>5 your report, if you reviewed a document</p> <p>6 related to those topics, did you list it in</p> <p>7 your list of documents reviewed? Yes or</p> <p>8 no.</p> <p>9 MR. BUNN: Objection to form.</p> <p>10 A. I really think that that</p> <p>11 question is not clear.</p> <p>12 Q. What's not clear about it?</p> <p>13 A. I wrote a subject -- a subject</p> <p>14 matter expert report. In the subject</p> <p>15 matter expert report, various topics are</p> <p>16 covered. In the list of documents that I</p> <p>17 listed, I listed the documents that covered</p> <p>18 all of the things that I referenced.</p> <p>19 Q. Okay. So if you reviewed a</p> <p>20 document that relates to the Benecard/Smart</p> <p>21 relationship, the CMS audit of Smart, the</p> <p>22 CMS sanction of Smart, documents related to</p> <p>23 Smart or Benecard, if you reviewed it, did</p> <p>24 you list it?</p> <p>25 A. If it is referenced in my</p>	<p style="text-align: right;">Page 145</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 I reviewed a document because I simply</p> <p>3 looked at it in passing.</p> <p>4 Q. So did you read the CMS audit</p> <p>5 report, or not?</p> <p>6 A. I read it.</p> <p>7 Q. When did you read it?</p> <p>8 A. At some point during this</p> <p>9 exercise. Again, it's a public document.</p> <p>10 Q. Why is it not listed in the</p> <p>11 list of documents that you reviewed, then?</p> <p>12 A. Because I didn't reference it.</p> <p>13 Q. Because you didn't cite it?</p> <p>14 A. Exactly, I did not specifically</p> <p>15 cite that. And it is one of the few</p> <p>16 documents --</p> <p>17 MR. BARNOWSKI: We need to take</p> <p>18 a break, then. I need to know what she</p> <p>19 reviewed in writing this report. If she</p> <p>20 reviewed documents that she thinks</p> <p>21 conflicted with her testimony or don't</p> <p>22 support her, I'm entitled to know what she</p> <p>23 reviewed.</p> <p>24 MR. BUNN: You are entitled to</p> <p>25 ask her those questions.</p>

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<p style="text-align: right;">Page 214</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 MR. BUNN: That's a yes or no</p> <p>3 question.</p> <p>4 A. No.</p> <p>5 Q. Were there any follow-up</p> <p>6 questions at all?</p> <p>7 A. No.</p> <p>8 Q. Page 9 of your report, you</p> <p>9 state that "Smart's oversight and</p> <p>10 monitoring was 'not dependent on greater</p> <p>11 real-time access to Benecard's systems,'"</p> <p>12 and then you offer a number of opinions</p> <p>13 about OLE and COGNOS.</p> <p>14 You do agree -- strike that.</p> <p>15 Did you ask Benecard to show</p> <p>16 you what information was made available to</p> <p>17 Smart via OLE in the first three months of</p> <p>18 2013?</p> <p>19 A. No, I did not.</p> <p>20 Q. So can you and I agree you have</p> <p>21 no idea what information was made available</p> <p>22 to Smart via OLE in the first three months</p> <p>23 of 2013?</p> <p>24 A. I relied on the documentation I</p> <p>25 saw, which was the list of BRDs to</p>	<p style="text-align: right;">Page 216</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 but it was insufficient, correct?</p> <p>3 A. And, again --</p> <p>4 Q. I'm okay with the "and, again,"</p> <p>5 but if you can give me an answer to the</p> <p>6 "correct" first and then give me the "and,</p> <p>7 again."</p> <p>8 So is that correct?</p> <p>9 A. The Smart employees were saying</p> <p>10 they did have access to OLE and COGNOS</p> <p>11 reporting. The satisfaction that was</p> <p>12 expressed were the Smart employees stating</p> <p>13 that they wanted direct access to the</p> <p>14 system.</p> <p>15 So my report relied on the fact</p> <p>16 that it was my opinion that I thought that</p> <p>17 these tools provided enough access for</p> <p>18 SmartD to do oversight without waiting on</p> <p>19 what they considered to be real-time</p> <p>20 access.</p> <p>21 Q. But to be clear, the deposition</p> <p>22 transcripts you read of the three</p> <p>23 witnesses, Smart witnesses that you read,</p> <p>24 where they talk about OLE, were very clear</p> <p>25 that they believed that the information</p>
<p style="text-align: right;">Page 215</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 implement specific levels of access to OLE.</p> <p>3 Q. And did those BRDs indicate</p> <p>4 that they had been closed out, completed?</p> <p>5 A. I do not recall. They are</p> <p>6 included in the documentation.</p> <p>7 Q. Are you aware that Benecard was</p> <p>8 working, or at least claimed to be working,</p> <p>9 on a build-out of OLE that would make even</p> <p>10 more information available to Smart that</p> <p>11 was not closed out?</p> <p>12 A. I'm not.</p> <p>13 Q. So you don't know, of the BRDs</p> <p>14 you looked at, whether any of that</p> <p>15 information was actually made available to</p> <p>16 Smart, correct?</p> <p>17 A. I relied on the additional</p> <p>18 documentation that I cited in here where</p> <p>19 Smart's employees were saying that they did</p> <p>20 have access to OLE and COGNOS, but it was</p> <p>21 not so efficient, including deposition.</p> <p>22 Q. So you relied on documents and</p> <p>23 deposition testimony stating that they had</p> <p>24 some access to OLE, but that it was</p> <p>25 insufficient, and some access to COGNOS,</p>	<p style="text-align: right;">Page 217</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 given in OLE was not enough, correct?</p> <p>3 A. That was the testimony of the</p> <p>4 employees, yes.</p> <p>5 Q. And you've seen contemporaneous</p> <p>6 written e-mails from the Smart employees</p> <p>7 repeatedly saying that the OLE they got</p> <p>8 access to did not provide enough</p> <p>9 information, correct?</p> <p>10 A. There were complaints I saw</p> <p>11 from the Smart employees.</p> <p>12 Q. Over and over and over again,</p> <p>13 right?</p> <p>14 MR. BUNN: Objection to form.</p> <p>15 A. I wouldn't characterize it as</p> <p>16 over and over and over again. And, as I</p> <p>17 stated before, my opinion was that that was</p> <p>18 used as a crutch to not perform the</p> <p>19 oversight with the information they were</p> <p>20 given while awaiting additional access.</p> <p>21 Q. You have no idea what</p> <p>22 information was made available to Smart at</p> <p>23 any point in time via OLE, correct?</p> <p>24 MR. BUNN: Objection to form.</p> <p>25 A. The e-mails I read outlined</p>

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<p style="text-align: right;">Page 218</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 what the employees were able to see or not</p> <p>3 see.</p> <p>4 Q. And what did they say?</p> <p>5 A. That they are able to see some</p> <p>6 claims information, enrollment information,</p> <p>7 but they wanted more access.</p> <p>8 Q. And are those documents cited</p> <p>9 in the 30 documents that you read in this</p> <p>10 case?</p> <p>11 A. Yes.</p> <p>12 Q. And do you have any idea what</p> <p>13 information was made available via COGNOS?</p> <p>14 A. I do not, again, apart from the</p> <p>15 documents I cited.</p> <p>16 Q. Which documents that you cited</p> <p>17 lay out the information that was made</p> <p>18 available to Smart via OLE?</p> <p>19 A. One moment.</p> <p>20 (Witness perusing document.)</p> <p>21 A. One specific document was BC</p> <p>22 0166897.</p> <p>23 Q. And, I'm sorry, what number is</p> <p>24 that on your list?</p> <p>25 A. It is number 3.</p>	<p style="text-align: right;">Page 220</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 A. And the question is, do I agree</p> <p>3 that in order to do which job?</p> <p>4 Q. Do you agree that in order to</p> <p>5 do its job consistent with contractual</p> <p>6 obligations to CMS, that a sponsor's</p> <p>7 transparency with respect to business</p> <p>8 partners is key?</p> <p>9 MR. BUNN: Objection to form.</p> <p>10 A. I agree that a sponsor needs to</p> <p>11 be transparent with CMS, amongst other</p> <p>12 things, like maintaining an open</p> <p>13 relationship and remediating corrective</p> <p>14 action plans and all of the other things</p> <p>15 that they have committed to within the</p> <p>16 scope of the contract.</p> <p>17 Q. That's not quite what I asked,</p> <p>18 though.</p> <p>19 A. Okay.</p> <p>20 Q. In order to do its job,</p> <p>21 consistent with its contractual obligations</p> <p>22 to CMS, a sponsor needs transparency with</p> <p>23 respect to the FDRs, doesn't it?</p> <p>24 MR. BUNN: Objection to form.</p> <p>25 A. Is your question whether the</p>
<p style="text-align: right;">Page 219</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 Q. BC 0166897?</p> <p>3 A. I believe so.</p> <p>4 Q. Any others?</p> <p>5 A. I will continue to look.</p> <p>6 Please also refer to the</p> <p>7 documents at footnote 11. I'm guessing I</p> <p>8 don't have to read all of those.</p> <p>9 Q. Your testimony is that the</p> <p>10 documents set forth in footnote 11 lay out</p> <p>11 the information that was available via OLE</p> <p>12 to Smart?</p> <p>13 A. Yes.</p> <p>14 Q. Anything else?</p> <p>15 A. I can't say with certainty at</p> <p>16 this time that there are no other</p> <p>17 documents, but they are included in the</p> <p>18 documents cited.</p> <p>19 Q. Do you agree that in order to</p> <p>20 do your job with -- strike that.</p> <p>21 Do you agree that in order to</p> <p>22 do its job consistent with contractual</p> <p>23 obligations to CMS, that transparency with</p> <p>24 business partners is a key element?</p> <p>25 MR. BUNN: Objection to form.</p>	<p style="text-align: right;">Page 221</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 sponsor needs the PBM to be transparent to</p> <p>3 the sponsor, is that the question?</p> <p>4 Q. That's one of the elements,</p> <p>5 isn't it?</p> <p>6 A. I think that's the expectation</p> <p>7 of any relationship, that both parties be</p> <p>8 transparent with each other.</p> <p>9 Q. And sponsors generally expect</p> <p>10 full visibility into the delegated entity's</p> <p>11 performance of its delegated</p> <p>12 responsibilities, correct?</p> <p>13 MR. BUNN: Objection to form.</p> <p>14 A. Yes.</p> <p>15 Q. And you agree that it wouldn't</p> <p>16 be industry standard for a sponsor to</p> <p>17 refuse to -- strike that.</p> <p>18 It would not be industry</p> <p>19 standard for a PBM to refuse to allow the</p> <p>20 sponsor to test the claims adjudication</p> <p>21 system before plan benefits go live?</p> <p>22 A. So your specific question is</p> <p>23 addressing an area that takes various</p> <p>24 forms, depending on who your PBM is and who</p> <p>25 the plan sponsor is. That's not the only</p>

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<p style="text-align: right;">Page 234</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 configured here, do you?</p> <p>3 A. No.</p> <p>4 Q. Did you ask?</p> <p>5 A. I did not have a need to.</p> <p>6 Q. Why did you not have a need to?</p> <p>7 A. Because in this report, I</p> <p>8 address two different mechanisms that the</p> <p>9 PBM was using to attempt to allow SmartD to</p> <p>10 access its member information.</p> <p>11 The OLE tool is a tool that</p> <p>12 allows you to look into the system and acts</p> <p>13 as sort of a mirror, and that's how I</p> <p>14 viewed that. Between those two tools,</p> <p>15 there was at least sufficient access for</p> <p>16 some level of oversight to have occurred.</p> <p>17 Q. But you don't know what the OLE</p> <p>18 gave access to here, do you?</p> <p>19 A. Again, the way the OLE behaves</p> <p>20 is almost a camera. It looks into the</p> <p>21 system. And I looked at the BRD and the</p> <p>22 specific requirements.</p> <p>23 Q. That's a critical part of your</p> <p>24 testimony, right, that OLE functioned like</p> <p>25 a camera?</p>	<p style="text-align: right;">Page 236</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 correct?</p> <p>3 A. Again, there was no evidence to</p> <p>4 suggest that it was useless. In the</p> <p>5 documentations I reviewed, there was no</p> <p>6 evidence to suggest that it was useless.</p> <p>7 Q. So I take it from that answer</p> <p>8 that Benecard did not share with you that</p> <p>9 its own IT staff wrote e-mails in which it</p> <p>10 said that OLE was useless for the needs</p> <p>11 that Smart had; is that accurate?</p> <p>12 MR. BUNN: Objection to form.</p> <p>13 A. Again, if I read the testimony</p> <p>14 in the depositions of the Smart employees,</p> <p>15 there is no evidence to suggest that OLE</p> <p>16 was non-Part D, the testimony I relied on.</p> <p>17 MR. BARNOWSKI: I move to</p> <p>18 strike that answer as nonresponsive.</p> <p>19 Q. My question is simply, I take</p> <p>20 it from your answer that Benecard did not</p> <p>21 share with you that its own IT staff wrote</p> <p>22 e-mails in which it stated, or they stated,</p> <p>23 that OLE was useless for the needs that</p> <p>24 Smart had; is that accurate? They didn't</p> <p>25 tell you that?</p>
<p style="text-align: right;">Page 235</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 MR. BUNN: Objection to form.</p> <p>3 A. That is not a critical part of</p> <p>4 my testimony. My testimony is that between</p> <p>5 OLE and COGNOS, those two tools should have</p> <p>6 been sufficient to provide enough</p> <p>7 information to perform oversight.</p> <p>8 Q. Can you and I agree that if OLE</p> <p>9 gave no relevant information with respect</p> <p>10 to Part D, that your testimony would</p> <p>11 change?</p> <p>12 A. I would be speculating, so I</p> <p>13 will not agree to that.</p> <p>14 Q. I'm not asking you to</p> <p>15 speculate.</p> <p>16 If OLE gave no relevant</p> <p>17 information with respect to Part D, if it</p> <p>18 was useless to someone looking for Part D</p> <p>19 information, would COGNOS be enough?</p> <p>20 A. If configured correctly.</p> <p>21 Q. But you don't know how it was</p> <p>22 configured here, right?</p> <p>23 A. No.</p> <p>24 Q. And you don't know if OLE was</p> <p>25 useless with respect to Part D fields here,</p>	<p style="text-align: right;">Page 237</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 MR. BUNN: Objection to form.</p> <p>3 A. Are you asking me if Benecard</p> <p>4 staff shared e-mails with me where the</p> <p>5 Benecard staff was stating that OLE was</p> <p>6 useless?</p> <p>7 Q. I'm asking if they told you</p> <p>8 that.</p> <p>9 A. I did not ask those questions.</p> <p>10 Q. Did they offer that on their</p> <p>11 own?</p> <p>12 A. No.</p> <p>13 Q. Would that surprise you to find</p> <p>14 out?</p> <p>15 MR. BUNN: Objection to form.</p> <p>16 A. Again, this is -- I cannot</p> <p>17 answer that.</p> <p>18 Q. It would not be -- strike that.</p> <p>19 Benecard needed to do --</p> <p>20 provide at least OLE and COGNOS, correct?</p> <p>21 MR. BUNN: Objection to form.</p> <p>22 A. In this particular case,</p> <p>23 Benecard and SmartD seem to have worked</p> <p>24 together for Benecard to provide COGNOS and</p> <p>25 OLE in lieu of giving access to their live</p>

60 (Pages 234 - 237)

<p style="text-align: right;">Page 282</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 you are actually providing the guidance on</p> <p>3 the front end. So the PBM can correct the</p> <p>4 ratios early in the process.</p> <p>5 Q. And when you say looking at</p> <p>6 coverage determination requests, are you</p> <p>7 again talking about a sampling of coverage</p> <p>8 determination requests or are you talking</p> <p>9 about all of them?</p> <p>10 A. A sampling of coverage</p> <p>11 determination requests.</p> <p>12 Q. Do you know whether that</p> <p>13 happened here?</p> <p>14 A. I did not find any evidence</p> <p>15 that the plan sponsor requested that for</p> <p>16 every operational area.</p> <p>17 Q. You don't know that one way or</p> <p>18 the other, right?</p> <p>19 A. No.</p> <p>20 Q. What else?</p> <p>21 A. So the proactive monitoring is</p> <p>22 definitely a strong thing, having daily</p> <p>23 meetings with the PBM and following up on</p> <p>24 issues. For example, if Mary Jane didn't</p> <p>25 get her medications, it would be my plan's</p>	<p style="text-align: right;">Page 284</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 and it was hundreds of items long by the</p> <p>3 end of February. Have you seen that list?</p> <p>4 A. I don't recall that with</p> <p>5 certainty.</p> <p>6 Q. Would that show at least some</p> <p>7 of the kind of follow-up and urgency that</p> <p>8 you are talking about?</p> <p>9 MR. BUNN: Objection to form.</p> <p>10 A. So a project demonstrates that</p> <p>11 there is an ask and something is being done</p> <p>12 about it. But the engagement I'm speaking</p> <p>13 about is actually daily, hands-on</p> <p>14 communications with PBM executives on</p> <p>15 issues like member medication issues and</p> <p>16 coverage determinations to start raising</p> <p>17 visibility at the outset.</p> <p>18 Q. Do you know whether those</p> <p>19 occurred here? You and I can agree you</p> <p>20 don't know whether they occurred one way or</p> <p>21 the other?</p> <p>22 A. I don't know, yeah, any</p> <p>23 specific details of meetings, etc.</p> <p>24 Q. Anything else?</p> <p>25 A. So we talked about routine</p>
<p style="text-align: right;">Page 283</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 obligation to reach out to the PBM and say</p> <p>3 I want evidence that Mary Jane got her</p> <p>4 medication, if that didn't happen in a</p> <p>5 particular day.</p> <p>6 And that's basically setting</p> <p>7 the tone for oversight. It demonstrates to</p> <p>8 the PBM that you are actively watching</p> <p>9 them, you are actively reviewing the</p> <p>10 operational areas. And that's, I mean,</p> <p>11 that's pretty much a consistent expectation</p> <p>12 for every single operational area until 18</p> <p>13 months in when you can have a bit more of a</p> <p>14 periodic auditing and monitoring.</p> <p>15 Q. Do you know whether Smart was</p> <p>16 meeting daily with the PBM here?</p> <p>17 A. I did not ask that question.</p> <p>18 However, I did see evidence of a project</p> <p>19 plan, that there were conversations between</p> <p>20 Smart and Benecard.</p> <p>21 Q. Have you seen the request list</p> <p>22 that existed between Smart and Benecard?</p> <p>23 A. A request list?</p> <p>24 Q. Yes. There is a request list</p> <p>25 that was being added to as time went by,</p>	<p style="text-align: right;">Page 285</p> <p>1 F. CULLEY-TROTMAN</p> <p>2 monitoring at the outset, holding the PBM</p> <p>3 accountable and following up to make sure</p> <p>4 the member gets their medications, those</p> <p>5 are the biggest things. Ensuring that the</p> <p>6 written policies and procedures are</p> <p>7 actually implemented through observation,</p> <p>8 training.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. As a plan sponsor, I've</p> <p>11 actually conducted, for both startup and</p> <p>12 established plans, mock calls to the PBM to</p> <p>13 determine whether their call center lines</p> <p>14 are working like they're supposed to.</p> <p>15 Q. You saw testimony from</p> <p>16 Ms. Cappadonna that that occurred here,</p> <p>17 correct?</p> <p>18 A. I believe that was mentioned.</p> <p>19 And then on an ongoing basis,</p> <p>20 obviously to ensure that the processes you</p> <p>21 believe are in place continue to exist, you</p> <p>22 would have to continue that activity, the</p> <p>23 testing of the PBM's website and the</p> <p>24 formulary that's posted and all of these</p> <p>25 things.</p>

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1 F. CULLEY-TROTMAN

2 question that is difficult, just evade the

3 question and tell the member that someone

4 else will call you back?

5 MR. BUNN: Objection to form.

6 A. If CMS issues a directive to

7 the plan sponsor and the plan sponsor in

8 turn turns to the PBM and says do this,

9 unfortunately PBMs try to keep costs down,

10 so they will sometimes just deploy staff

11 from another area.

12 But yes, the staff should be

13 trained to do what they are doing.

14 Q. To use your word, that is at

15 least undesirable behavior?

16 You are nodding your head yes.

17 A. Yes.

18 MR. BARNOWSKI: I have no

19 further questions. I appreciate your time.

20 (Continued on the next page.)

21

22

23

24

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1 F. CULLEY-TROTMAN

2 THE VIDEOGRAPHER: We are going

3 off the record, 4:33 p.m. This is the end

4 of disk five and concludes the deposition

5 of Francoise Culley-Trotman.

6

7

8 [TIME NOTED: 4:33 p.m.]

9

10

11

12

13 FRANCOISE CULLEY-TROTMAN

14

15

16 Subscribed and sworn to before me

17 this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

18

19 \_\_\_\_\_

20 Notary Public

21

22

23

24

25

Page 296

1

2 I N D E X

3

4 WITNESS EXAMINATION BY PAGE

5 CULLEY-TROTMAN BARNOWSKI 4

6

7

8 E X H I B I T S

9 FCT DESCRIPTION PAGE

10 Exhibit 1 Expert report of 75

Culley-Trotman

11 Exhibit 2 SMT00000653-00000654 99

Exhibit 3 SMT00174576-00174579 109

12 Exhibit 4 CMS 0000352-0000479 151

Exhibit 5 SMT00866523-00866524 170

13 Exhibit 6 SMT00027008 257

14

15

16

17 DIRECTIONS NOT TO ANSWER

18 Page Line

19 30 24

20

21 REQUESTS

22 Page Line

23 (NONE)

24

25

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1

2 CERTIFICATION

3

4 I, TODD DeSIMONE, a Notary Public for

5 and within the State of New York, do hereby

6 certify:

7 That the witness whose testimony as

8 herein set forth, was duly sworn by me; and

9 that the within transcript is a true record

10 of the testimony given by said witness.

11 I further certify that I am not related

12 to any of the parties to this action by

13 blood or marriage, and that I am in no way

14 interested in the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set

16 my hand this 20th day of July, 2016.

17

18 *Todd Desimone*

19 TODD DESIMONE

20

21

22

23

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25

75 (Pages 294 - 297)